

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)

Limitations on Commercial Time on)
Television Broadcast Stations)

MM Docket No. 93-254

To: The Commission
(STOP CODE 1800D)

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

JOINT REPLY COMMENTS

Jovon Broadcasting Corporation ("Jovon"), licensee of Station WJYS-TV, Hammond, Indiana; Roberts Broadcasting Company ("Roberts"), licensee of Station WHSL-TV, East St. Louis, Illinois; and Blackstar Communications, Inc. ("Blackstar"), licensee of Stations WBSF(TV), Melbourne, Florida, WBSP(TV), Salem, Oregon and WBSX(TV), Ann Arbor, Michigan (collectively, the "Joint Parties"), through their attorneys, hereby submit their Joint Reply Comments in response to the Commission's Notice of Inquiry in the above-captioned proceeding.^{1/}

Introduction

In 1984, the Commission substantially deregulated commercial television, including elimination of its processing guidelines governing the amount of advertising on commercial broadcast television stations (former 47 C.F.R. §

^{1/} Notice of Inquiry, MM Docket No. 93-254, FCC 93-459 (October 7, 1993) ("Notice"). By Order dated December 29, 1993 (DA 93-1576) the due date for reply comments in this proceeding was extended to February 4, 1994.

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0.283(a)(7)).^{2/} The Commission took this deregulatory action based upon its conclusion that the video marketplace would better regulate appropriate commercial levels.^{3/} This conclusion was premised on four primary observations that: (a) marketplace forces are the decisive factor in determining appropriate levels of commercialization; (b) the direct costs associated with adherence to the guidelines were greater than the benefits resulting from their continued enforcement; (c) the commercial guidelines hampered the ability of television stations to effectively compete; and (d) the commercial guidelines presented serious First Amendment concerns due to their "potential chilling effect on commercial speech."^{4/} As a result, the Commission hoped that its deregulation of television stations' commercial practices would "promote licensee experimentation and otherwise increase commercial flexibility."^{5/}

As evidenced by the growth and development of the video marketplace over the past decade, the Commission's goals of commercial innovation and experimentation have come to fruition. Specifically, a new broadcast television entertainment format -- namely, home shopping -- made its debut into the video

2/ Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations, MM Docket No. 83-670, 98 FCC 2d 1076 (1984) ("Television Deregulation"), recon. denied, Memorandum Opinion and Order, 104 FCC 2d 358 (1986), aff'd in part and remanded in part sub. nom., Action for Children's Television v. FCC, 821 F.2d 741 (D.C. Cir. 1987).

3/ Television Deregulation, 98 FCC 2d at 1102-1104.

4/ Id.

5/ Id. at 1105.

marketplace in 1986. Since its introduction, the home shopping format has flourished and today enjoys widespread public acceptance and popularity.^{6/}

There is, however, another aspect of televised home shopping that also must be considered by the Commission in this proceeding; namely, the impact of any reregulation of advertising on minority ownership of television stations. The home shopping format, as a direct result of the efforts of Home Shopping Network, Inc. ("HSN"), the entity which introduced it, has furthered and fostered increased minority ownership in the video marketplace. Even this marginal progress would be reversed by the reimposition of commercial limitations on television. At present, for example, HSN is affiliated with 36.7% of all minority-owned television stations in the country. According to NTIA, there are 19 Black-owned television stations in the United States, seven owned by Hispanics and one owned by Asians.^{7/} Also, Stations WJJA(TV), Racine, Wisconsin and WTMW(TV), Arlington, Virginia, which are Black-owned also are affiliated with HSN but were not included in NTIA's most recent analysis of

6/ This acceptance and popularity is demonstrated not only by the thousands of viewers home shopping attracts but also by the number of video sources which presently carry the format or are contemplating doing so in the future. See, e.g., Communications Daily, November 3, 1993, at 6 (noncommercial education television station proposing institution of a national home shopping service); "PBS Station Offers Shopping From Homes," The Wall Street Journal, October 15, 1993, at B14; "Old Kentucky home shopping," Broadcasting & Cable, December 6, 1993, at 91 (example of a local station experimenting with format); "Time Warner, Spiegel shop for viewers," Broadcasting & Cable, October 4, 1993, at 22; Communications Daily, October 27, 1993, at 7; Broadcasting & Cable, October 25, 1993, at 65; "French retailer considers TV home shopping," Financial Times, November 26, 1993, at 20..

7/ National Telecommunications and Information Administration, "Analysis and Compilation By State of Minority-Owned Commercial Broadcast Stations" (October 1993).

minority ownership. Thus, eight of the Black-owned stations, one of the Hispanic-owned stations and the sole Asian-owned station are affiliated with HSN.

Both Congress and the Commission have repeatedly emphasized their concern about minority ownership of the media and have taken affirmative steps aimed at encouraging the growth of such ownership.^{8/} These laudable Congressional and Commission goals have been partially realized due in large part to HSN's direct assistance to minorities interested in entering the broadcast television industry.^{9/}

The Notice suggests the possible return to pre-deregulation restrictions on the telecast of commercial matter. Not only would such restrictions still entail the same costs and burdens which spurred the Commission's Television Deregulation decision, but they also would threaten the continued existence of the home shopping format on over-the-air television. Due to the dynamics of today's television

8/ See, e.g., Statement of Policy on Minority Ownership of Broadcasting Facilities ("Minority Ownership Statement"), 68 FCC 2d 979, 982 (1978) ("... in issuing this statement of policy, we today endorse our commitment to increasing significantly minority ownership of broadcast facilities"); Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting ("Policy Statement"), 92 FCC 2d 849 (1982); Making Further Continuing Appropriations for Fiscal Year 1988 and for Other Purposes, Pub. L. 100-202 (December 22, 1987); 47 U.S.C. § 309 (i)(3)(A) (1988); see also Metro Broadcasting, Inc. v. FCC, 110 S.Ct. 2997 (1990) ("we find that [the FCC minority ownership policies] serve the important governmental objective of broadcast diversity").

9/ In its Minority Ownership Statement, the Commission noted that "if the goal of significant minority ownership is to be reached, Congress, other governmental agencies, and the private sector must join in these efforts." 68 FCC 2d at 984. Since 1986, HSN has made considerable strides to assist the Commission in its stated goal of increasing minority ownership by providing both financial, technical and programming assistance to minorities attempting to construct and/or operate a broadcast television station. See HSN Comments in MM Docket No. 93-254 at 25-26.

marketplace, any detriment to home shopping programming inevitably would adversely affect the nation's current level of minority television station ownership. Such a result would directly conflict with 25 years of affirmative regulatory policy and undermine the advances made in minority ownership over the past two decades.

Accordingly, the Joint Parties urge the Commission not to counteract the advances made in minority ownership of commercial broadcast television stations since its Television Deregulation decision by reimposing commercial limits or other restrictions on home shopping programming. As the Commission observed in 1984, the Joint Parties submit that the marketplace rather than the government remains the most effective determinant of success and appropriate commercial levels for television broadcast stations. Thanks to the introduction and acceptance of the home shopping format, minority broadcast television applicants, permittees and licensees have been provided entry into the highly competitive video marketplace. The Commission should not take any action which would foreclose the opportunities for increased minority ownership or frustrate implementation of Congressional and Commission policies pertaining to such ownership. Rather, the Commission should reaffirm the Television Deregulation's grant of freedom to experiment with new programming and commercial formats and continue its encouragement and support for diversity of ownership of broadcast facilities.

**The Public Interest Would Be Disserved
by the Reimposition of Commercial Limits**

The Commission's primary focus in the Notice is whether the public interest would be served by the establishment of limits on the amount of commercial matter broadcast by television licensees. Significantly, the overwhelming majority of parties who submitted comments in this proceeding oppose the imposition of any commercial limits. These commenters opine that commercial restrictions are unnecessary because the video marketplace, as contemplated by the Television Deregulation decision, provides sufficient disincentives against broadcast of an "excessive" amount of commercial matter (which is, in turn, determined by viewer acceptance of programming).^{10/} The Joint Parties concur in this assessment of the dynamics of today's video marketplace; moreover, the growing and widespread popularity of home shopping programming demonstrates this to be the case.

Only one set of comments -- those filed by the Center for the Study of Commercialism, Center for Media Education, Consumer Federation of America, and Office of Communication of the United Church of Christ ("CSC") -- advocates the imposition of commercial limits on broadcast television stations. Though CSC's Comments allege supposed "harms" resulting from the broadcast of commercial matter to the extent included in the home shopping format, they fail to provide any supporting documentation or proof of such harms. Also notably absent from CSC's

^{10/} See e.g., HSN Comments at 15-16; Comments of the National Association of Broadcasters at 2, 4 and 6; Comments of Valuevision International, Inc. at 2; Comments of Capital Cities/ABC, Inc. at 5-6; Comments of National Broadcasting Company, Inc. at 2-5.

Comments is any discussion of the adverse impact such commercial limits will have on the diversity of ownership of broadcast television facilities.

In light of the significant boost provided to minority television station ownership by the introduction of the home shopping format,^{11/} the Commission should not address, and indeed cannot adequately evaluate, the public interest benefits and detriments associated with the reimposition of commercial limits without considering the substantial costs flowing from such action -- such as the decrease in minority ownership. Furthermore, given the significant emphasis which both Congress and the Commission have placed on fostering such ownership and the substantial time and effort it has taken to reach the current minority ownership level (which still needs substantial improvement), the Commission, unlike CSC, cannot and must not simply overlook this crucial consequence. To the contrary, this undesirable effect alone dictates against the Commission's continued pursuit of this action without a demonstrated overriding need or substantial benefit. As advocated in the numerous comments opposing such action, there is none.

**Home Shopping Programming Has Contributed Significantly
to the Growth and Development of Minority Ownership**

Dating back to 1986, when it acquired its first broadcast television stations, HSN has made a commitment to take affirmative steps to expand the pool of

^{11/} See e.g., Comments of Judy Koenig, Vice President and General Manager, Blackstar Communications of Oregon, Inc.; Comments of Brunson Communications, Inc. at 6; NAB Comments at 14, n.14.

minority-owned television stations.^{12/} By its efforts, HSN has funded the acquisition or construction of seven minority-owned television stations^{13/} and has furthered the development of other such stations by entering into affiliation agreements. The Joint Parties themselves have been direct beneficiaries of HSN's financial assistance:

(a) Jovon received funding for construction of Station WJYS-TV serving the Chicago market;

(b) Roberts received funding for construction of Station WHSL-TV, East St. Louis, Illinois, the first new television station in the St. Louis market in 20 years and the sole minority-owned station in the market;

(c) Blackstar, one of the nation's largest minority-controlled group station owners, received funding for the acquisition of three major market television stations -- namely, Station WBSF, Channel 43, Melbourne (Orlando), Florida, WBSP, Channel 22, Salem (Portland), Oregon, and Station WBSX, Channel 31, Ann Arbor (Detroit), Michigan.

Through HSN's financing, the Joint Parties were provided access to the video marketplace and given the opportunity to increase the diversity of ownership in the

^{12/} See Comments of Silver King Broadcasting, Inc., MM Docket No. 93-8, filed March 29, 1993, at 39.

^{13/} As recognized by the Commission's Advisory Committee on Alternative Financing for Minority Opportunities in Telecommunications, "'financing has remained the single greatest obstacle' to minority entry into the telecommunications industry." Policy Statement, 92 FCC 2d at 853.

marketplace as desired by the Commission.^{14/} In addition, their television stations, which have home shopping formats, have been able to serve their communities with local programming, much of it directed to the minority community.

HSN's commitment to the progress of minority ownership has not been limited to financial and technical support for the acquisition and construction of television broadcast stations. Rather, HSN also has greatly contributed to the continued presence of minority-owned and/or -controlled television stations in today's rapidly changing and highly competitive video marketplace by providing home shopping programming through Television Affiliation Agreements with the following television stations:

- WJJA-TV, Racine, Wisconsin
- KCMY(TV), Sacramento, California
- KPST-TV, Vallejo, California
- WTMW(TV), Arlington, Virginia

Conclusion

As described above, the home shopping format pioneered by HSN has facilitated the realization of Congress' goal and the Commission's policies of increasing minority television ownership. Any Commission adoption of new commercial restrictions would present a substantial number of the nation's minority-owned television stations with a very difficult problem -- how to continue their station

^{14/} Minority Ownership Statement, 68 FCC 2d at 981 ("... the Commission believes that ownership of broadcast facilities by minorities is another significant way of fostering the inclusion of minority views in the area of programming").

operations in today's video marketplace. Station owners like the Joint Parties who, with HSN's support, have persevered should not now be crippled once again and made to choose between ceasing operations or adopting a new, more conventional format which would most likely have the same result. Instead, the Commission should consider such minority ownership in reviewing the merits of any commercial limitations and should continue its encouragement and facilitation of minority ownership by not imposing any commercial restrictions on broadcast television stations.

Respectfully submitted,

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BLACKSTAR COMMUNICATIONS, INC.

By: 

John E. Oxendine

President

February 4, 1994

CERTIFICATE OF SERVICE

I, Lisa A. Saunders, hereby certify that a copy of the foregoing "JOINT REPLY COMMENTS" was hand delivered on this 4th day of February, 1994 to the following:

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A handwritten signature in cursive script, reading "Lisa Saunders", written over a horizontal line.

Lisa Saunders